



**GEORGIA GOVERNMENT TRANSPARENCY &
CAMPAIGN FINANCE COMMISSION**

**Advisory Opinion
No. 2020-01**

In response to an advisory opinion request on April 2, 2020, from Rep. William Boddie, the Georgia Government Transparency and Campaign Finance Commission advises that (a) members of the Georgia General Assembly, including other public officers subject to O.C.G.A. § 21-5-35(a), are permitted to issue reimbursements to themselves, and members of their campaign staff, after the General Assembly officially adjourns its legislative session, from their campaign's separate depository account¹ to themselves and members of their campaign staff for expenses incurred by them on behalf of their campaign during a suspension of the General Assembly's legislative session, and (b) members of the Georgia General Assembly, including other public officers subject to O.C.G.A. § 21-5-35(a), must report the reimbursements as a "reimbursement" under the "expenditure" section of their Campaign Contribution Disclosure Report (CCDR) for the relevant reporting period in which the reimbursements occur.²

Questions Presented in Request for Advisory Opinion 2020-01

- (1) "Can a Member of the General Assembly legally reimburse themselves, after [the General Assembly adjourns] *Sine Die* for funds used from their personal bank account for campaign-related expenses (based on receipts) during the suspension of this [2020] legislative session?"
- (2) "If [yes to No. 1 *supra*], would the Member of the General Assembly have to disclose this action as a "Loan" or "Reimbursement" on their next campaign disclosure report?"

Factual Background

In a letter dated April 2, 2020, Rep. William Boddie (Rep. Boddie) seeks guidance as to whether members of the Georgia General Assembly may, in compliance with the Georgia Government

¹ All public officers and candidates for elected public office who have declared their intent to accept campaign contributions pursuant to O.C.G.A. § 21-5-30(g) are required to maintain a separate campaign depository account that is separate and apart from their personal depository accounts pursuant to O.C.G.A. § 21-5-32(a).

² The Commission also advises that the terms of this advisory opinion has no effect upon the Act's requirement that all candidates for public office are required to file a Declaration of Intention to Accept Campaign Contributions (DOI) prior to the acceptance and/or expenditure of campaign funds pursuant to O.C.G.A. § 21-5-30(g).

Transparency & Campaign Finance Act (Act), legally reimburse themselves from their campaign committee's separate campaign depository account for campaign related expenses that were incurred by the candidate personally during the suspension of the General Assembly's 2020 legislative session, which occurred on March 12, 2020 pursuant to House Resolution 1473.³ Rep. Boddie also seeks guidance as to whether a member of the General Assembly would have to disclose any reimbursement as a "loan" or "reimbursement" on the member's next subsequent CCDR.

Discussion & Legal Analysis

When the General Assembly adopted the Ethics in Government Act (the precursor to the current Georgia Government Transparency and Campaign Finance Act) (hereinafter "Act"), the General Assembly instituted a number of prohibitions upon the ability of both elected public officers and candidates for elected public office to accept and expend campaign funds during their campaigns for elected office (e.g., maximum campaign contribution limits, spending restrictions, accounting requirements, etc.). Chief among these restrictions is a prohibition against, *inter alia*, members of the General Assembly which forbids them from accepting contributions to their campaigns for public office while the General Assembly is officially in session. The original Act held, in pertinent part, that "No member of the General Assembly or that member's campaign committee [...] shall accept a contribution during a legislative session." O.C.G.A. § 21-5-35(a) (1995).

Over time, members of the General Assembly began testing the limits of the Act's prohibition against the acceptance of campaign contributions during an official session of the General Assembly. During this time, one of the more common "loopholes" employed by elected public officers was to arrange for "pledges" and "goals" from supporters during the General Assembly's official legislative session with actual contributions remaining unpaid until the General Assembly adjourned *Sine Die* upon the conclusion of the 40th legislative day. In response, the State Ethics Commission (the precursor to the current Georgia Government Transparency and Campaign Finance Commission) (hereinafter "Commission"), sought to enforce the Act's prohibition against the acceptance of contributions by means of the fictitious "pledges" and "goals" during a legislative session on the grounds that said goals and pledges were contributions under the Act as they were "...[some]thing of value conveyed or transferred for the purpose of influencing the nomination for election or election of any person for office...." O.C.G.A. § 21-5-3(6).⁴ In response

³ The General Assembly suspended its legislative session on March 12, 2020 and reconvened on March 16, 2020 in a special session to concur with Governor Brian P. Kemp's Declaration of a Public Health Emergency which was issued on March 14, 2020.

⁴ O.C.G.A. § 21-5-3(6) (1995) held that a "Contribution means a gift, subscription, membership, loan, forgiveness of debt, advance or deposit of money or anything of value conveyed or transferred for the purpose of influencing the nomination for election or election of any person for office, bringing about the recall of a public officer holding elective office or opposing the recall of a public officer holding elective office, or the influencing of voter approval or rejection of a proposed constitutional amendment, a state-wide referendum, or a proposed question which is to appear on the ballot in any county or municipal election. The term specifically shall not include the value of personal services

to the Commission's new enforcement priority, a member of the General Assembly sought to strengthen their argument in opposition by seeking an unofficial opinion from the Georgia Department of Law in an attempt to confirm that the Act's prohibition was silent as to the acceptance of pledges and goals. The Department of Law, while although agreeing with the requestor that the Act did not explicitly prohibit the acceptance of "pledges" and "goals," advised against the acceptance of the same when they opined, *inter alia*, that:

It is clear that **the General Assembly intended O.C.G.A. § 21-5-35 to prevent even the appearance of impropriety by its members** or certain state officers in accepting contributions during a period where legislation is pending and there could be a perception that any legislative action could be influenced by the giving of a campaign contribution. This strong statement by the General Assembly is consistent with its desire that public officials not be influenced in the performance of their duties by improper "political contributions."

1995 Op. Att'y Gen. No. U95-27 (emphasis added).

The Department of Law also opined that the prohibition contained in O.C.G.A. § 21-5-35 most closely resembled the state's criminal bribery statute in that the Act's prohibition sought to prevent members of the General Assembly, and other public officers subject to O.C.G.A. § 21-5-35(a), from accepting things of value in an effort to, arguably, influence their official public duties. *Id.* See O.C.G.A. § 16-10-2 (bribery prohibited). See also, Teper v. Miller, 82 F.3d 989 (11th Cir. 1996) (holding that the Act's universal prohibition on public officers accepting campaign contributions during the General Assembly's legislative session was superseded by the Federal Elections Campaign Act as applied to public officers seeking federal office). See generally, State v. Agan, 259 Ga. 541, (1989), cert. denied, 494 U.S. 1057 (1990) (Differentiation between permissible political influence and prohibited bribery).

As presently drafted, the Act holds that "No member of the General Assembly or that member's campaign committee [...] **shall seek or accept a contribution or a pledge of a contribution to the member**, the member's campaign committee, [...] during a legislative session." O.C.G.A. § 21-5-35(a) (2019) (emphasis added).⁵ The Act also presently defines a "contribution" as, *inter alia*, "[A] gift, subscription, membership, loan, forgiveness of debt, advance or deposit of money or anything of value **conveyed or transferred** for the purpose of influencing the nomination for election or election of any person for office[...]" O.C.G.A. § 21-5-3(7) (emphasis added).

performed by persons who serve without compensation from any sources and on a voluntary basis. The term "contribution" shall include other forms of payment made to candidates for office or who hold office when such fees and compensation made can be reasonably construed as a campaign contribution designed to encourage or influence a candidate or public officer holding elective office. The term "contribution" shall also encompass transactions wherein a qualifying fee required of the candidate is furnished or paid by anyone other than the candidate. (Internal quotations omitted).

⁵ The Act's prohibition on members of the General Assembly was amended to explicitly prohibit the acceptance of pledges of a contribution while the General Assembly is still officially in session.

Whereas the Act currently defines an “expenditure” as, *inter alia*, “[A] purchase, payment, distribution, loan, advance, deposit, or any transfer of money or anything of value **made for the purpose** of influencing the nomination for election or election of any person[...].” O.C.G.A. § 21-5-3(12) (emphasis added).

In the first question presented by Rep. Boddie, the Commission is essentially asked to consider whether a member of the General Assembly, or a member of their campaign staff, may expend their own personal funds on campaign expenditures and then subsequently reimburse themselves from campaign funds once the General Assembly has officially adjourned *Sine Die* or adjourned as otherwise provided by the Constitution of the State of Georgia?⁶ In any subsequent analysis, the Commission must first note that the Act prohibits members of the General Assembly and certain public officers subject to O.C.G.A. § 21-5-35 from accepting contributions while the General Assembly is in session, but it does not prohibit the same public officers from spending campaign funds that are presently in their or their campaign’s possession. Moreover, the Commission notes that the relevant prohibition on accepting contributions specifically states that a member of the General Assembly “shall [not] seek or accept a contribution or a pledge of a contribution to the member or the member’s campaign committee.” O.C.G.A. § 21-5-35 (emphasis added). In the hypothetical presented, the member would not be seeking a contribution of any kind as the member would not be donating to his own person that which is already in his possession (e.g., his own personal funds). Moreover, the Commission finds that the member in the hypothetical would not be transferring any assets (i.e. a “contribution”) to his campaign committee while the General Assembly was officially in session.⁷ On the contrary, the member would simply be making campaign expenditures from his own personal funds for campaign expenses, transactions which are not restricted by any provisions contained in O.C.G.A. § 21-5-35. In fact, so long as the campaign expenditures are related to ordinary and necessary campaign expenses, pursuant to O.C.G.A. § 21-5-3(18), those expenses may lawfully be reimbursed by the campaign at any time provided that the expenses meet the additional expenditure restrictions imposed by the Act on the use of campaign funds. *See*, O.C.G.A. § 21-5-33. In light of the foregoing, the Commission advises that a member of the General Assembly is not prohibited from making campaign expenditures from the member’s own personal funds while the General Assembly is officially in session. Additionally, the Commission advises that a member of the General Assembly may lawfully reimburse their ordinary and necessary campaign expenses made from personal funds. Furthermore, the Commission notes, as the Department of Law has noted previously, the prohibition on the acceptance of campaign contributions during a legislative session, as contained in the Act, was adopted to remove the appearance of impropriety and the possibility of undue influence or bribery. In the hypothetical presented, the Commission finds that

⁶ The General Assembly may adjourn pursuant to three different methods pursuant to Ga. Const. Art. III, Section IV, Para. I.

⁷ The Act does not mandate the use of a campaign committee by a candidate for public office as such a candidate may simply use a deposit account titled in their sole name without ever officially forming a campaign committee. *See*, O.C.G.A. § 21-5-30(g) and 21-5-32.

there is very little risk that a member of the General Assembly would be unduly influenced by the expenditure of their own personal funds, nor would the expenditure of said personal funds create an appearance of impropriety to members of the general public.

With regard to Rep. Boddie’s second question, the Commission advises that all campaign expenditures must be properly reported on a member’s CCDR as required by O.C.G.A. § 21-5-34(b)(1). As to the classification of the expenditure, the classification would depend on the nature of the expense and how that expense was made. In the hypothetical provided, the Commission advises that the expenses described in this hypothetical would, more likely than not, be described as reimbursements. *Id.* Moreover, the Commission observes that the expenditures could not be classified as loans as the member in the hypothetical presented would not be authorized to accept a loan on behalf of his campaign because of the prohibition that bans the acceptance of contributions, which includes loans, while the General Assembly is in session as has been previously discussed. The Commission also notes that campaigns are, and have always been, permitted to make reimbursements to volunteers and to the candidate’s themselves for expenses that have been incurred by the aforementioned persons in furtherance of the campaign, a practice with a long precedent dating back to the adoption of the Act, and the Commission finds no cause to warrant a change in that precedent at this time.

Conclusion

For the reasons described above, the Commission advises that (a) members of the Georgia General Assembly, including other public officers subject to O.C.G.A. § 21-5-35(a), are permitted to issue reimbursements to themselves, and members of their campaign staff, after the General Assembly officially adjourns its legislative session, from their campaign’s separate depository account⁸ to themselves and members of their campaign staff for expenses incurred by them on behalf of their campaign during a suspension of the General Assembly’s legislative session, and (b) members of the Georgia General Assembly, including other public officers as set forth in O.C.G.A. § 21-5-35(a), must report the reimbursements as a “reimbursement” under the “expenditure” section of their Campaign Contribution Disclosure Report (CCDR) for the relevant reporting period in which the reimbursements occurs.⁹

This Advisory Opinion concerns the application of the Georgia Government Transparency and Campaign Finance Act, or regulations prescribed by the Georgia Government Transparency and

⁸ All public officers and candidates for elected public office who have declared their intent to accept campaign contributions pursuant to O.C.G.A. § 21-5-30(g) are required to maintain a separate campaign depository account that is separate and apart from their personal depository accounts pursuant to O.C.G.A. § 21-5-32(a).

⁹ The Commission also advises that the terms of this advisory opinion has no effect upon the Act’s requirement that all candidates for public office are required to file a Declaration of Intention to Accept Campaign Contributions (DOI) prior to the acceptance and/or expenditure of campaign funds pursuant to O.C.G.A. § 21-5-30(g).

ADOPTED – APRIL 14, 2020

Campaign Finance Commission, to the specific facts, transaction or activity set forth in Request for Advisory Opinion 2020-01.

Advisory Opinion 2020-01 is hereby adopted by the Commission in conformity with O.C.G.A. § 21-5-6(13) on April 14, 2020.

/s/ Jake Evans
Jake Evans
Chairman of the Commission

AO 2020-01 prepared by Robert S. Lane.
April 6, 2020.